

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0399PUF
Fuel Tax
For Year 2000

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ISSUES

I. Fuel Tax – Civil Penalty

Authority: IC § 6-6-2.5-64; IC § 6-8.1-5-1

Taxpayer protests state's assessment of penalty for use of red dye fuel.

STATEMENT OF FACTS

Taxpayer's truck was stopped and the officer observed red dye in the fuel. The department's report of the investigation notes that the driver of the vehicle admitted to putting dyed fuel in the tanks approximately three weeks prior to the stop and subsequent lab test confirmed the presence of dye in the fuel. Taxpayer protested the assessed fine and the department notified taxpayer by first class mail on November 1st of 2000 of a hearing set for 10:00 am on December 5th of 2000. Taxpayer did not appear for the hearing, consequently this Letter of Findings was prepared based on taxpayer's written protest and documentation provided by both taxpayer and the Special Fuel tax division of the Department.

I. Fuel Tax – Civil Penalty

DISCUSSION

IC § 6-6-2.5-64 imposes civil fines of varying amounts (based on the number of prior violations) for the use of non taxed fuel-identified by red dye- in vehicles operated on Indiana's roads. Taxpayer argues that his records demonstrate that all of the fuel purchased by him and the operator of the vehicle were of taxed (non-dyed) fuel.

IC § 6-8.1-5-1(b) states in relevant part:

.... The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Taxpayer has provided records showing purchases of non-dyed fuel prior to the stop, but provided no explanation as to the presence of the dyed fuel in the vehicle's tank or the driver's statement admitting to the prior purchase of the dyed fuel. Consequently; taxpayer's argument fails to overcome the statutory burden of proof in IC § 6-8.1-5-1(b).

FINDINGS

Taxpayer protest denied.

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